

# United States District Court

DISTRICT OF DELAWARE

## In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

[REDACTED] Clayton,  
Delaware, described more particularly  
on Attachment A

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 06-19M

**REDACTED**

Jason C. Rundell

being duly sworn depose and say:

I am a(n) Special Agent, U.S. Department of Labor

Official Title

and have reason to believe

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

Clayton, Delaware, described more particularly on

Attachment A

in the \_\_\_\_\_ District of Delaware

there is now concealed a certain person or property, namely (describe the person or property to be seized)

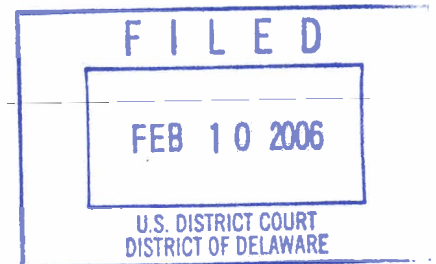
the items listed on Attachment B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

evidence of a crime

concerning a violation of Title 18 United States code, Section(s) 1341

The facts to support a finding of Probable Cause are as follows: "Affidavit attached."



Continued on the attached sheet and made a part hereof.

☒ Yes ☐ No

Signature of Affiant

Jason C. Rundell, Special Agent  
U.S. Department of Labor

Sworn to before me, and subscribed in my presence

February 6, 2006

Date

Honorable Gregory M. Sleet  
United States District Court

Name and Title of Judicial Officer

at Wilmington, Delaware  
City and State

Signature of Judicial Officer

ATTACHMENT A – HERBERT PREMISES

The premises known as the residence of Jackie E. Herbert Sr. is a single story, double-wide, modular home located on a 25-acre land parcel at [REDACTED] Clayton, Delaware. On this land parcel, owned by Jackie Herbert, are two residences, one residence has a mailbox on [REDACTED] which is marked with the number [REDACTED]. The residence that Jackie Herbert occupies is set back approximately 200 yards from [REDACTED] is accessed from [REDACTED] via a dirt driveway. The premises include any locked and unlocked safes, cabinets, closets, desks and other closed containers within.

**ATTACHMENT B**

For the period of 2001 through present, the following records and files in the name of, or on the behalf of Amalgamated Transit Union, Local 842:

1. Expense vouchers and supporting documentation;
2. Checking account and savings account records with Citizens Bank;
3. Checks representing the payment of dues by union members;
4. All records demonstrating that Jackie E. Herbert was an officer of ATU 842 and  
transacted business on its account; and \_\_\_\_\_
5. Indicia of occupancy for the premises to be searched.

**AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT FOR:**

, Clayton, Delaware

I, Jason C. Rundell, being duly sworn, state as follows:

**Introduction:**

1. I am a Special Agent with the United States Department of Labor (“USDOL”), Office of Inspector General, Office of Labor Racketeering and Fraud Investigations (“OLRFI”) in Philadelphia, Pennsylvania. I have held this position since June 27, 2004. My primary duty as an OLRFI Special Agent is to investigate fraud and theft in labor unions and fraud involving programs or agencies of USDOL. Prior to becoming a Special Agent I was a United States Probation Officer and in such position I submitted numerous reports to the Court relaying factual information on federal offenders and requested dozens of arrest warrants and sentence recommendations. I hold an Associates Degree in Criminal Justice and a Bachelors Degree in Public Justice. I completed twelve weeks of training at the Federal Law Enforcement Training Center in Glynco, Georgia in areas of federal criminal law, constitutional law, courtroom evidence, courtroom testimony, search warrants and federal court procedures.

2. Because this Affidavit is submitted for the limited purpose of establishing probable cause, I have not included every detail of every aspect of the investigation. Rather, I set forth only those facts that I believe are necessary to establish probable cause to search the residence of Jackie E. Herbert Sr. In addition, the information contained in this Affidavit is based on my personal knowledge and information provided to me by other law enforcement officers and individuals and my review of various documents and records. Unless specifically indicated, all conversations and statements described in this Affidavit are related in substance and in part only.

3. Since on or about February 11, 2005, this Affiant, a Special Agent of the USDOL, OLRFI has been conducting an investigation to determine if Jackie E. Herbert Sr., engaged in a scheme to embezzle funds belonging to Amalgamated Transit Union, Local 842 (ATU 842), and whether this artifice and scheme to defraud also involved the use of the mails or interstate carrier in violation of 18 U.S.C. § 1341 (Mail Fraud).

4. Based on the evidence obtained in this investigation to date, there is probable cause to believe that Jackie E. Herbert Sr., former President/Business Agent of ATU 842, (a) knowing and willfully converted thousands of dollars in ATU 842 funds to his personal use between August 2004 and February 2005, in order to maintain complete control over ATU 842 financial accounts, and to hide his theft, Herbert caused the U.S. Mails to be used as part of this scheme in violation of 18 U.S.C. 1341.

5. I further submit that the facts set forth in this affidavit establish probable cause to believe that there is presently located at or within the properties located at [REDACTED] Clayton, Delaware, as further described in Attachment A, evidence of the foregoing violations, that is, business records of ATU 842 listed in Attachment B. The property is the residence of Jackie E. Herbert Sr. Pursuant to Rule 41 of the Federal Rules of Criminal Procedures, I seek authority to search this property and to seize evidence, instruments, and fruits relating to the violations listed above.

**Jackie E. Herbert Sr:**

6. Jackie E. Herbert Sr. resides at [REDACTED] Clayton, Delaware. For approximately 20 years Herbert has been employed as a bus operator for Delaware Authority for Regional Transit (DART). DART is a division of the Delaware State Department of Transportation, a state government program. As an employee of DART Herbert was also a member of the

Amalgamated Transit Union, Local 842 (ATU 842). In approximately 1992, Herbert was elected as the Vice-President of ATU 842 and in approximately 1995 Herbert was elected as President (a part time Union position), a position he held until March 23, 2005.

**Delaware Authority for Regional Transit:**

7. DART provides statewide transportation services in Delaware with over 320 buses and 60 bus routes which includes commuter rail service to and from Philadelphia.

**Amalgamated Transit Union, Local 842:**

8. ATU 842 is the exclusive bargaining representative for hourly-rated operators and maintenance employees of DART, excluding supervisory employees. The current agreement between ATU 842 and DART covers the period of December 1, 2002 to November 30, 2007. Currently, there are approximately 450 DART bus drivers and maintenance workers who are members of, and pay dues to, ATU 842.

**ATU 842 Dues Withholding from DART:**

9. DART withheld ATU 842 dues from ATU 842 members employed by DART and sent those checks (dues checks) directly to Jackie Herbert's residence. Between March 2003 and March 2005, DART sent ninety-eight (98) of these dues checks to Herbert totaling \$548,650.84. This affiant has examined envelopes containing dues checks addressed to Jackie E. Herbert at his residence for the period 2001 and portions of 2005. All dues check envelopes examined by this affiant <sup>here 3/2</sup> for U.S. postmarks. It is the understanding of this affiant that most, if not all, such dues check envelopes were similarly mailed to Herbert. All of these checks were deposited into the ATU 842 Citizens Bank checking account. The by-laws of ATU 842 state that the Treasurer shall collect all money due to the union.

**Lost Wages:**

10. The By-Laws of ATU 842 states that Union Officers and Executive Board Members may be compensated for their Union work via "lost wages." The by-laws further state that the President shall receive 10 hours of pay per month from the Union for his faithful duties as President and shall receive the hourly rate equal to the highest paid operator rate. Every union member requesting pay for lost wages must submit properly filled out and signed request form for pay.

**Embezzlement of ATU 842 Funds:**

11. In 2001, Jackie E. Herbert Sr. released himself from his fulltime bus driving position with DART and began paying himself with union funds as the fulltime ATU 842 President. Herbert set his pay equal with the highest paid operator rate (approximately \$18.46/hour) and paid himself for 80 hours of work per week as the ATU 842 President.

12. On July 13, 2004, the ATU 842 union body made a motion to reduce Jackie Herbert's Presidential pay to 40 hours per week. On August 12, 2004, this motion passed and Herbert's union pay was to be reduced to 40 hours/week

13. Between August 10, 2004 and November 11, 2004, Jackie Herbert issued from the ATU 842 Citizens Bank account and deposited into his personal account at Wilmington Trust, sixteen (16) checks for pay as the ATU 842 President at 80 hours per week. Below is an itemized list of the sixteen (16) checks:

Check Number	Transaction Date	Amount	Check Memo
1662	08/10/04	\$974.20	Pay Period: 08/08/2004-08/14/2004
1664	08/17/04	\$974.19	Pay Period: 08/15/2004-08/21/2004
1667	08/23/04	\$974.20	Pay Period: 08/22/2004-08/28/2004
1679	09/07/04	\$974.19	Pay Period: 08/29/2004-09/04/2004
1680	09/08/04	\$974.19	Pay Period: 09/05/2004-09/11/2004
1681	09/08/04	\$974.19	Pay Period: 09/12/2004-09/18/2004
1689	09/27/04	\$974.20	Pay Period: 09/19/2004-09/25/2004



Check Number	Transaction Date	Amount	Check Memo
1705	10/13/04	\$974.19	Pay Period: 10/10/2004-10/16/2004
1707	10/13/04	\$974.19	Pay Period: 10/24/2004-10/30/2004
1704	10/14/04	\$974.19	Pay Period: 10/03/2004-10/09/2004
1706	10/14/04	\$974.20	Pay Period: 10/17/2004-10/23/2004
1718	10/22/04	\$974.19	Pay Period: 10/31/2004-11/06/2004
1735	11/11/04	\$974.19	Pay Period: 11/07/2004-11/13/2004
1736	11/11/04	\$974.19	Pay Period: 11/14/2004/11/20/2004
1737	11/11/04	\$974.20	Pay Period: 11/21/2004-11/27/2004

14. The amount listed on each check above is net pay for approximately 80 hours of pay. The correct net pay for 40 hours of work per week should be approximately \$450.81. Based on this information, Jackie Herbert unlawfully overpaid himself \$7,678.28 with these checks after the August 12, 2004, union body vote to reduce his hours to be paid. The sixteen (16) checks listed above were written from an account at Citizen's Bank and deposited into Herbert's account at Wilmington Trust. Herbert's action caused these checks to be sent through the mails or a private carrier in violation of 18 U.S.C. § 1341.

**Duplicate Paychecks:**

15. During the twelve (12) week period beginning January 2, 2005, and ending on March 26, 2005, Jackie Herbert issued from the ATU 842 Citizens Bank account and deposited into his personal account at Wilmington Trust, sixteen (16) paychecks. This affiant has received and analyzed bank statements and checks from Herbert's Wilmington Trust account and I have determined that Herbert unlawfully issued the following checks, totaling \$2,600.14, from ATU 842 Citizens Bank checking account and deposited them into his personal account. The following checks represent pay periods for which Herbert had already paid himself from the ATU 842 account. Herbert's action caused these checks to be sent through the mails or a private carrier in violation of 18 U.S.C. § 1341.



Check Number	Transaction Date	Amount	Check Memo
1814	01/26/05	\$650.04	Pay Period: 01/09/2005-01/15/2005
1815	01/26/05	\$650.03	Pay Period: 01/16/2005-01/22/2005
1816	01/26/05	\$650.04	Pay Period: 01/23/2005-01/29/2005
1845	02/24/05	\$650.03	Pay Period: 03/14/2005-03/26/2005

**Failure to Provide Documents and Computers via Subpoena:**

16. On December 28, 2005, OLRFI Special Agents made a demand upon Jackie Herbert for all financial documents of ATU 842. On January 6, 2006, Jackie Herbert, through his attorney, turned over twenty (20) boxes of documents to this affiant. This affiant reviewed the documents provided by Herbert and found that they did not contain dues checks for the periods August through December 2004 and January and February 2005; ATU 842's savings and checking account records with Citizens Bank; or expense vouchers and supporting documentation, all for the relevant period. These findings were relayed to Mr. Herbert's attorney, who responded that Herbert denied having such documents and that Herbert said that any such papers formerly in his possession had been provided by him to Gary Rodgers and/or Donald O'Bier, former ATU 842 union officers.

**ATU 842 Internal Audit Report:**

17. On November 9, 2004, the International Secretary-Treasury of Amalgamated Transit Union located in Washington, D.C. received ATU 842's audit report for the six-month period ending June 30, 2004. This audit report, signed by Jackie E. Herbert, states that ATU 842 financial records are maintained by Gary Rodgers. Gary Rodgers provided a sworn statement to this affiant on January 10, 2006 stating that he was not involved with union finances and never possessed union financial documents. The report also states that the cash balance of the ATU 842 bank account was \$25,914. Citizen's Bank account number 810001-481-5, an account with the name "Amalgamated Transit Union Local 842" had a balance of \$17,657.91 on June 30, 2004. Also, Herbert failed to

report in this audit report, the balance of a Citizen's Bank savings account (Account number 8240-094488) which bore the ATU 842 name but was not reported to the union body. On June 30, 2004, the balance of this savings account was \$10,054.14. Based on the receipt of this audit report the International ATU sent a letter to Gary Rodgers dated November 16, 2004, stating that the International had received the audit report mentioned above.

**ATU 842 Union Officers:**

18. Gary Rodgers was the Financial Secretary-Treasurer of ATU 842 from 1997 until he was voted out of office in December 2004. On September 23, 2005, and January 10, 2006, Gary Rodgers told me that during his tenure as Treasurer he never received or possessed any ATU 842 bank documents or information. On average, once per month, Herbert would present Rodgers with approximately 8 blank checks from ATU 842's Citizens Bank checking account. Rodgers would sign these blank checks and give them back to Herbert. Rodgers is unaware what these checks were used for.

19. Donald O'Bier was the Financial Secretary-Treasurer of ATU 842 from January 11, 2005 until March 24, 2005. On March 31, 2005, O'Bier told me that he did not receive any checking or savings ledgers or other account books for ATU 842. O'Bier received blank ATU 842 check stock from Jackie Herbert.

20. Wali Rushdan was the Vice-President of ATU 842 from 1998 until March 2005. On January 10, 2006, Wali Rushdan told me that he never possessed ATU 842 financial documents or was he involved with ATU 842 financial activity. Rushdan told this affiant that the union paychecks were mailed from Jackie Herbert's house or were hand delivered by Herbert. Rushdan's W-2's for ATU 842 income were mailed from Herbert's home. Rushdan stated that either Gary Rodgers or Jackie Herbert possessed ATU 842 financial documents.

21. Addie Richardson was the Recording-Secretary of ATU 842 from approximately 1995 until December 2004. On January 10, 2006, Richardson told this affiant that she never recorded any ATU 842 financial records nor did she ever handle any ATU 842 financial documents.

22. Carleen Wright was the Recording-Secretary of ATU 842 from January to March 2005. Wright told this affiant that upon assuming office she was provided with only blank notebooks and old union voting documents. Wright stated that on one occasion she saw Jackie Herbert in possession of blank checks which bore the signature of Gary Rodgers.

**ATU 842 Union Office at Herbert's Residence:**

23. Jackie E. Herbert Sr. established the office of ATU 842 at his residence located at [REDACTED] Clayton, Delaware. During Herbert's tenure as President, the ATU 842 Citizens Bank checking account bore the address of [REDACTED], Clayton, Delaware, as did the ATU 842 American Express Account. The ninety-eight (98) checks listed above, issued by DART to ATU 842, bore the address [REDACTED] Clayton, Delaware.

24. Gary Rodgers told this affiant that while he was Treasurer of ATU 842 he traveled to Herbert's residence on [REDACTED] several times per month to discuss union business. Rodgers added that while at Herbert's residence he and Herbert used computers to work on grievance letters, financial reports, print checks and letters and to send union-related email.

25. On January 10, 2006, Gary Rodgers told me that approximately two (2) years ago Jackie Herbert moved from his home at [REDACTED] Clayton, Delaware, to a modular home behind [REDACTED] residence.

26. On September 25, 2005, this affiant retrieved planning, building, zoning and tax map information on [REDACTED] Clayton, Delaware, from Kent County, Delaware. The information obtain revealed that two dwellings are located on the 25.30 acre property at [REDACTED]

[REDACTED] Clayton, Delaware. The owners of the property are Jackie and Rosie Herbert and Jackie Herbert's address is listed as [REDACTED] Clayton, Delaware. A map obtained from the Kent County Mapping/Assessing office revealed that a second residence on the aforementioned property is set back from the road but is on the same parcel as [REDACTED]

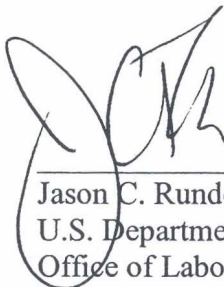
[REDACTED] Verizon has provided your affiant with information that Jackie Herbert is the current subscriber for phone service at [REDACTED] Clayton, Delaware. In the January 10, 2006 interview of Gary Rodgers this affiant drew a map of the land parcel at [REDACTED]

Clayton, Delaware. Rodgers indicated on the hand drawn map that Jackie Herbert's new residence is set back from [REDACTED] and is accessed via a driveway.

**Conclusion:**

27. Based on the aforementioned, I submit that there is probable cause to believe that Jackie E. Herbert Sr. embezzled funds belonging to ATU 842 and in furtherance of the theft caused the mails to be used in violation of 18 U.S.C. § 1341. I submit that there is probable cause to believe that evidence of the criminal activity in violation of these statutes will be found at [REDACTED] [REDACTED], Clayton, Delaware, as further described in Attachment B.

I declare under penalty of perjury that the information provided above is true and correct.



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Jason C. Rundell, Special Agent  
U.S. Department of Labor, OIG  
Office of Labor Racketeering  
and Fraud Investigations